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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.146 OF 2004

Suresh Kumar Jain)
Residing at Vasant Vihar Co-op.)
Housing Society, Behind Vasant)
Talkies, Mumbai, presently in)
the Mumbai Central Prison.) ... Petitioner
(Detenu)

Versus

1. R.K. Gupta,)
Joint Secretary to the Government)
of India, Ministry of Finance)
Department of Revenue,)
COFEPOSA Section.)

2. The State of Maharashtra,)
through the Superintendent of)
Prison, the Mumbai Central)
Prison, Arthur Road, Mumbai.)

3. Union of India,Aiyakar Bhavan)
New Marine Lines, Mumbai.) ... Respondents

Mr. U.N. Tripathi for the petitioner.

Mr. D.S. Mhaispurkar, A.P.P. for the State.

Mr. R.M. Agarwal for respondents 1 and 3.

CORAM: SMT. RANJANA DESAI &
A.S. OKA, JJ.

DATED: 1ST OCTOBER, 2004.

ORAL JUDGMENT:- (**Per Smt. Ranjana Desai, J.**)

1. The petitioner (for convenience, "the detenu") has been detained by Mr. R.K. Gupta, Joint Secretary to the Government of India, under section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short, "the COFEPOSA Act") with a view to preventing him from acting in any

manner prejudicial to the augmentation of foreign exchange, in future. The order of detention, the grounds of detention and the material in support thereof were served on the detenu on 22/11/2003.

2. Before we go to the nature of the prejudicial activities in which the detenu is involved, we will note the points of attack on the order of detention. Mr. Tripathi, the learned counsel appearing for the petitioner-detenu firstly contended that the grounds of detention do not indicate that the detaining authority was aware about the bail position of the detenu. He submitted that the grounds do not indicate whether the detenu was ever arrested; whether he was released on bail and whether when the order of detention was passed, the detenu was in custody. This ground has not been raised by Mr. Tripathi in the petition. This petition was on our board on 10/9/2004. By consent of parties, it was adjourned to 13/9/2004. On 13/9/2004, Mr. Tripathi prayed for leave to amend the petition, which was granted to him. Mr. Agarwal, the learned counsel appearing for respondents 1 and 3 wanted more time. Mr. Tripathi, however, objected. We, therefore, directed Mr. Agarwal to file a local affidavit in reply to the amendment. Thereafter, Mr. Tripathi carried out the amendment. Even in the amended petition, this point was not raised. Considering the fact that we are dealing with a preventive detention petition, we asked Mr. Tripathi whether he is aware of the exact bail position of the

detenu. He submitted that he has no instructions. In such circumstances, we are not inclined to adjourn the petition more so because Mr. Agarwal, on instructions from officers who are present in court, has made a statement that the detenu was never arrested in connection with the prejudicial activities on the basis of which the present detention order is issued. In his affidavit, Mr. Anil Vasant Sardal, API, CB, CID, has stated that when he served the detention order on the detenu, the detenu was a free agent. In view of this, we need not dwell on this point.

3. Mr. Tripathi has assailed the order on several grounds such as the grounds of detention are vague; that there is inconsistency between paragraphs 29 and 42 of the grounds of detention; that the detenu had no antecedents and it was not necessary to detain him and this fact was not considered by the detaining authority; that there is delay in issuing the order of detention; that there is non-supply of vital documents; that there is supply of illegible documents and there is non supply of true and correct translations. Mr. Tripathi very heavily relied on the judgment of the Supreme Court in **Kamaleshkumar Ishwardas Patel v. Union of India & Ors, JT 1995 (3) SC 639** where the Supreme Court has observed that the safeguards provided under Articles 22(4) and (5) of the Constitution of India are the minimum safeguards for the protection of persons sought to be preventively detained and, therefore, these safeguards are required to

be "jealously watched and enforced by the court". Their rigour cannot be modulated on the basis of the nature of the activities of a particular person". Mr. Tripathi, therefore, contended that his submissions may be considered in the light of the above observations of the Supreme Court and the nature of the activities in which the detenu is involved should not weigh with us while considering his submissions.

4. We are mindful of the observations made by the Supreme Court in **Kamleshkumar's case (supra)**. But, whether in a given case, there is really and truly infraction of Article 22(4) and (5) must be examined by the court. In our opinion, particularly in cases of smuggling and foreign exchange racketeering of great magnitude, the court has to adopt a cautious approach as possibility of false and untenable plea of infraction of Article 22(5) being made with ingenuity for the purpose of defeating the order, cannot be ruled out.

5. Grounds of detention reveal that reliable information was received by the Enforcement Directorate that a person using mobile phone No.9843021514 had been indulging in receiving and making compensatory payments under instructions of a person residing in UAE and that he had received payments of Rs.69 lakhs and Rs.65 lakhs on 7/2/2000 and 8/2/2000 respectively, from the said non-resident. Preliminary enquiries made by the Directorate revealed that the said mobile phone number belonged to C. Surendrakumar, who was residing at

No.1394, Trichy Road, Coimbatore and he had later vacated therefrom. Further investigations conducted by the Directorate had unearthed a hawala racket involving huge transfer of funds estimated over Rs.600 crores to India from UAE through unauthorised channel as per instructions of one Asarulla Rakka Khan, an Indian citizen, resident in Dubai; that his father K.P. Abdul Majeed of Kozhikode, Kerala, was managing the receipts and distribution of those funds by engaging various persons in Mumbai, Coimbatore in Tamil Nadu and northern parts of Kerala. The modus operandi, so far detected, was that funds in Indian Rupees were received in Mumbai from undisclosed sources, were credited into the bank accounts, maintained under fictitious names and addresses; that the persons had since been identified as employees or agents of K.P. Abdul Majeed. The funds, after deposited in those fictitious bank accounts in Mumbai, were transferred to bank accounts in Coimbatore and Kerala (maintained in the names of different persons with different banks) by means of Telegraphic Transfers; that therefrom the funds were withdrawn by cash. The source of funds and the end users or ultimate beneficiaries were not disclosed by the persons who were questioned so far, leaving it to the logical conclusion that there was a criminal conspiracy behind that hawala racket.

6. The residential premises of Surendrakumar was searched on 11/4/2000, which resulted in the seizure of

certain documents. During the course of investigation, evidence was gathered from various banks. It was also revealed that the deposits in C. Surendran's account / M/s. Lord Krishna Bullion, Mumbai and other bank accounts in Mumbai referred to above were mainly by means of cash / transfers from other accounts of persons, who appeared to be C. Surendran's associates, except in the case of M/s. Sweety International (P) Limited, Mumbai, in which the detenu was a Director, who had purchased pay orders for a sum of Rs.4.68 crores from their account no. 4380 with Indian Overseas Bank, Kalbadevi Branch, Mumbai, as detailed in Annexure - I [(C)(i)] which were found credited in the bank accounts in C. Surendran's name and in the name of his firm viz. M/s. Lord Krishna Bullion maintained with Lord Krishna Bank, Fort, Mumbai; and that immediately after credit of those amounts, the same were transferred to C. Surendran's various aforesaid bank accounts [Annexures I(a) and I (b)] maintained at Coimbatore in Tamil Nadu, and Calicut, Palakkad, Ernakulam and Trissur in Kerala.

7. After the detenu's involvement came to light, his statements came to be recorded. His statement dated 2/9/2002 gives clear idea about the hawala transactions.

He stated in that statement that -

> "(a) He knew Bhupendra through Laxman Akani and Laxman told him over phone that if he had to send amounts to Dubai, he

must handover the money to Bhupendra and he (Laxman) would receive the same. He was now working with Chaurasia and Bhupendra Thakkar and was doing cheque-discounting business.

(b) He had an un-written agreement with Laxman that whatever drawback amounts were received by Sweety International against Imports made by Laxman, 80% would be Laxman's share and balance 20% would be his share.

(c) He has further explained his connection with Shri Bhupendra, who linked his role in transfer of funds to South India through Surendran and this role was known to Ashok and Dinesh also. Further, he has identified the photograph of Ashok F. Jain, Dineshkumar Chaurasia and Mahendra Dave and further confirmed the working of these persons for Bhupendra.

8. In his statement dated 19/9/2002, when questioned as regards Sl.No.5, cell phone bearing No.00971506590974 under the head Incoming in his mobile phone no.98201 80905, the detenu has stated that this is the cell phone

no. of Asarulla Raka Khan @ Altaf who stays in Dubai. He has further stated that Asarulla Raka Khan had given Laxman Bhai, the amounts that are to be transferred to Laxman Bhai by him and given to the employee of Bhupendra after confirming with him over his office phone or mobile phone. After his confirmation only, Asarulla Raka Khan pays the amount to Laxman Bhai. He has further described his independent connections with Asarula Raka Khan in transfer of funds even without the assistance of Bhupendra Thakkar and he has also explained a particular call on 9/7/2002 made by Shri Asarulla Raka Khan on his mobile phone to confirm the payment of Rs.5 lakhs. He has also stated that Shri Dinesh used to collect the amounts from him in lieu of amounts being delivered to Laxman by Altaf.

9. In his statement dated 26/2/2003, the detenu has confirmed his earlier statements and further stated that out of Rs.17.35 crores, 80% of the amount was sent to Laxman, who stayed in Dubai through Bhupendra Thakkar. These amounts were paid in instalments through various persons of Bhupendra Thakkar.

10. The statement of detenu's brother Raj Kumar Jain was recorded on 6/5/2003. He has stated that on instructions of the detenu number of accounts were opened for Bhupendra Thakkar for doing hawala transactions on instructions of a person in Dubai. Raj Kumar Jain has further stated that he knew Bhupendra as a businessman in

the name of Pawan Jewelers and the name of his employees as Dinesh, Ashok F. Jain and Mahendra Dave.

11. These statements along with other statements and other subsidiary material was placed before the detaining authority. The detaining authority thereafter came to a conclusion that the detenu had been engaging himself in activities prejudicial to the augmentation and conservation of the foreign exchange resources of the country. The detaining authority came to a further conclusion that considering the nature and gravity of the offence, the detenu's role therein, the planned manner in which the detenu had been indulging in such prejudicial activities, all of which reflect the detenu's high potentiality and propensity to continue to engage in such prejudicial activities, in future, he was satisfied that unless detained, the detenu is likely to engage in the aforesaid prejudicial activities in future also and, therefore, it was necessary to detain the detenu under the COFEPOSA Act, 1974 with a view to preventing the detenu in future from acting in any manner prejudicial to the augmentation of country's foreign exchange resources.

12. Having gone through the grounds of detention and having perused the material in support thereof, we have no hesitation in recording that the detaining authority's satisfaction as regards the propensity and potentiality of the detenu to indulge in similar activities, in future, is well founded.

13. Before we deal with Mr. Tripathi's contention regarding supply of documents, which comprises non-supply of documents, supply of illegible documents and non-supply of true and correct translations, it is necessary to see the law laid down by the Supreme Court and by this court as regards supply of documents. It will have to be examined whether non-furnishing of any and every documents leads to infraction of Article 22(5) of the Constitution. In this connection, we may firstly refer to the judgment of the Supreme Court in **Vakil Singh v. State of Jammu and Kashmir and Anr., AIR 1974 SC 2337**. In that case, the detenu was told the name of the notorious agent and courier through whom he was supplying the information about the Indian Army and was further informed about the place in Pakistan which he was visiting. It was held that nothing more was required to be intimated to enable him to make an effective representation. The Supreme Court explained the word "grounds" as the material on which the order of detention was primarily based and emphasised that the grounds must contain the pith and substance of primary facts, but not subsidiary facts or evidential details. The relevant paragraph may be quoted:

> "Grounds within the contemplation of 5.8(1) of the Act means 'materials' on which the order of detention is primarily based. Apart from conclusions of facts, grounds

have a factual constituent also. They must contain the pith and substance of primary facts but not subsidiary facts or evidential details. This requirement as to the communication of all essential constituents of the grounds was complied with in the present case. The basic facts as distinguished from factual details, were incorporated in the material communicated to the detenu. He was told the name of the notorious PAK agent and courier (Mian Raham resident of Jumbian) through whom he was supplying the information about the Indian Army. He was informed about the places in Pakistan which he was visiting. He was further told that in lieu of the supply of this information, he has been receiving money from Pakistan. Nothing more was required to be intimated to enable him to make an effective representation. The facts which were not disclosed were not basic facts, and their non-disclosure did not affect the petitioner's right of making a representation."

14. In **Khudiram Das vs. The State of West Bengal, AIR 1975 SC 550**, the history sheet was not supplied to the petitioner. Considering the relevant cases on the point the Supreme Court observed "..... material from the

history sheet which was not disclosed to the petitioner did not form part of the grounds of detention on which the order of detention was made by the District Magistrate and approved by the State Government, but merely constituted "other particulars" communicated by the District Magistrate to the State Government under section 3, sub-section (3). There was, therefore, no obligation on the District Magistrate or the State Government to disclose this material to the petitioner and the non-disclosure of it to the petitioner did not have the effect in invalidating the approval of the State Government to the order of detention."

15. In **M.S. Umma Salema v. B.B. Gujral, AIR 1981 SC 1191**, there was a failure to supply certain information regarding the trunk-calls made and petrol bills in respect of the petrol put in the jeep used for smuggling. The Supreme Court held that failure to furnish copies of documents to which a reference is made in the grounds of detention is not an into judgment of Article 22(5), fatal to the order of detention. It is only failure to furnish copies of such of the documents, as were relied upon by the detaining authority, making it difficult to the detenu to make a representation, that amounts to infringement of the fundamental right of the detenu under Article 22(5). The Supreme Court held that it was not necessary to furnish copies of the documents to which a casual or passing reference may be made in the course of the narration of facts and which were not relied upon by

the detaining authority in making the order of detention.

16. In Prakash Chandra Mehta v. Commissioner and Secretary, Government of Kerala & Ors., AIR 1986 SC 687, the Supreme Court considered the meaning of the expression "grounds" and held that the expression "grounds" for that matter includes not only conclusions of fact but also all the "basic facts", on which those conclusions were founded. They are different from subsidiary facts or further particulars of the basic facts".

17. In **Meena Mahendra Vakharia v. K.L. Verma & Ors., decided by a bench of this court on 5th & 6/3/1997**, this court had an occasion to consider the same issue. After taking a resume of the entire case law on the point, this court drew the following conclusions:

> "If a document is a basic document or a document which contains the pith and substance of primary facts which are the basis of the grounds of detention, such a document must be communicated to the detenu in order to comply with the constitutional obligation under Article 22(5) of the Constitution of India. This, however, does not mean that it is necessary for the detaining authority to furnish to the detenu each and every document, however,

insignificant or inconsequential it may be, and to which a mere reference is made in the grounds of detention and which can, therefore, be said to have been incorporated by reference in the grounds of detention.

(2) In other words, if it transpires that a particular document is neither a basic document nor does it contain the pith and substance of primary facts but is only a subsidiary details of the grounds of detention or is an elaboration of the modus operandi adopted by the detenu, in our view, it is unnecessary for the detaining authority to furnish such a document to the detenu. If the facts which are not disclosed are not the basic facts, their non-disclosure does not affect the detenu's right under Article 22(3) of the Constitution of India.

(3) It would, therefore, follow that, all the basic facts on which the detaining authority has based its conclusions in taking the order of detention must be communicated to the detenu so as to comply with the plain requirement of the first safeguard of Article 22(5) of the

Constitution but this does not mean that "other particulars" apart from the material constituting the grounds of detention which other particulars do not form the basis of the making of the order of detention should also be disclosed to the detenu.

(4 The documents or facts to which a mere casual or passing inference is made in the grounds of detention, but which do not constitute the basic material for recording the satisfaction in the grounds of detention need not be communicated to the detenu...."

18. The above judgments make it clear that the detenu must be supplied with the documents, which contain pith and substance of the primary facts which are the basis of the detention order.

19. Mr. Tripathi firstly contended that there is a reference to certain pay orders in paragraph 42 of the grounds of detention. It is stated that some amount was paid to Bhupendra Thakkar by means of pay orders in favour of Surendran and others. These pay orders, according to Mr. Tripathi, are vital documents and ought to have been supplied to the detenu. In the affidavit in reply, the detaining authority has stated that a

certificate issued by the concerned bank in respect of pay orders/bankers cheques has been included in the set of relied upon documents. It is an admitted position that a copy thereof has been supplied to the detenu. In our opinion, since the bank certificate is supplied, this submission of Mr. Tripathi must be rejected for the bank certificate would give the details of the pay orders.

20. Mr. Tripathi then urged that pages 529 to 567 of the compilation are illegible and Hindi translation thereof are also not supplied to the detenu. He contended that the detenu only knows Hindi. He does not understand English and, therefore, there is infraction of Article 22(5) of the Constitution. Mr. Tripathi also submitted that the detenu has studied only upto 5th Standard.

21. In this connection, our attention has been drawn by Mr. Agarwal, the learned counsel appearing for respondents 1 and 3 to certain documents from the compilation, which indicate that the claim made by the detenu that he does not know English is totally false.

22. At page No.579 of the compilation, there is an extract of the statement of the detenu recorded under section 37 of the Foreign Exchange Management Act, 1999. In that statement, which appears to have been written by the detenu himself, the detenu has given his educational qualification as 10th Standard. At page 582, against the

column "Languages known", the following is found.

"A) READ	:	HINDI
B) SPEAK	:	HINDI
C) WRITE	:	HINDI/ENGLISH"

23. It appears that the detenu has written the statements in his own hand and many parts of the statements are in English. Therefore, the claim made by the detenu that he does not know English is false. In **Prakash Chandra Mehta's case (supra),** the Supreme Court was considering a similar fact situation. In that case, the detenu's claim was that he only knew Gujarati and he did not understand any other languages. The Supreme Court examined the facts and came to a conclusion that the claim made by the detenu was false. The Supreme Court observed that there is no rule of law that commonsense should be put in cold storage while considering constitutional provisions for safeguards against misuse of powers by authorities though these constitutional provisions should be strictly construed. The Supreme Court further observed that court is not the place where one can sell all tales. The Supreme Court noted that the detenu was merely feigning ignorance of English. These observations of the Supreme Court are clearly applicable to the present case. A total false plea is raised that the detenu does not understand English. The grievance about non-supply of translation, therefore, appears to us to be not genuine. Even then

since we are dealing with preventive detention we will deal with the point of translation assuming that the detenu does not know English.

24. According to Mr. Tripathi, on page 23 in paragraph 41 of the grounds, it is mentioned that Thakkar had engaged himself and the detenu had also made payments in cash and by bank pay orders to Thakkar or his employees as per the directions of Laxman Akhani of Dubai, who, in turn, had received foreign exchange from Asarulla Rakka Khan of Dubai. According to Mr. Tripathi, this portion is not translated. In reply to this, the detaining authority has, in his affidavit, stated that the detenu has been supplied with the free translation which gives the sum and substance of the order and that the detenu and others were engaged by Thakkar for transfer of funds and the mode of transfer was partly in cash and partly in bank pay orders from the account of M/s. Sweety International Private Limited in which the detenu has an interest, as Director. We are satisfied with this explanation. The prejudicial activity is intricate but its mode and pattern is very clear from the grounds of detention read as a whole. From the free translation, the nature of the prejudicial activity, the detenu's involvement therein and the purport of the order are conveyed to the detenu. Moreover, the detenu has, in his statement stated the portion quoted by Mr. Tripathi and a translated copy of that statement has been supplied to him.

25. Mr. Tripathi has shown to us a letter dated 5/1/2001, which is at page 84 of the compilation. Drawing our attention to the certified true copy of the said letter supplied to him, Mr. Tripathi urged that there is an illegible endorsement made on this letter but, in the translated version the said endorsement is not there at all. In our opinion, first of all, the said document cannot be called the basis of the order of detention. Moreover, the said endorsement on the copy of this document placed before the detaining authority itself was not readable. We are, therefore, of the opinion that because the said endorsement was not found in the translated version or the translation thereof was not supplied to the detenu, the detenu's right under Article 22(5) is not violated.

26. Mr. Tripathi then drew our attention to a document at page 17 of the compilation, which is described as "Mahazar". His objection is that in that document, a sentence viz. "As a result of the search, currency was seized with a reasonable belief that the same would be useful and relevant for further investigations under Foreign Exchange Regulation Act, 1973" is cancelled with a pen. However, in the Hindi version, it is not cancelled. We have seen the Hindi version. It is true that that portion is not struck of. However, below this sentence, in the English version, it is clarified that nothing is seized. This is a very material portion of the said document. In the Hindi version it has been

translated as "kutch nahi paya gaya". Therefore, the most vital aspect of the document has been conveyed to the detenu. We find no substance in this argument of Mr. Tripathi.

27. Mr. Tripathi then drew our attention to page 110 of the compilation. He pointed out that in the translated version, certain endorsements made on the English version are found missing. We find that the endorsements and the missing portions are totally innocuous and it cannot be said that on account of non translation thereof Article 22(5) is violated.

28. In our opinion, none of the documents about whose translation grievance is made are documents which form the basis or the pith and substance of the detention order. So far as the point of translation is concerned, Mr. Tripathi has sought to rely on a judgment of the Supreme Court in **Vijay Kumar Dharna alias Koka v. Union of India and others, (1990) 1 SCC 606**. In our opinion, this judgment will not be applicable to the facts of the present case because in that case, Gurumukhi version of the detention order stated that it was issued to prevent the detenu from smuggling goods and abetting the smuggling of goods whereas in the English version, it was stated that it was issued for preventing abetting the smuggling of goods. Thus, there was a major variance in the two versions. It is against this background that the Supreme Court set aside the order.

29. Mr. Tripathi then relied on a judgment of the Supreme Court in **Powanammal v. State of Tamil Nadu and another, 1999 Cri.L.J. 831**. In that case, the order of remand relied upon by the detaining authority to reach his subjective satisfaction was not translated in Tamil and supplied to the detenu. The order of detention was set aside on that ground. But it is necessary to refer to the observations made by the Supreme Court in that case. The Supreme Court observed that there is distinction between a document which has been relied upon by the detaining authority in the grounds of detention and a document which finds a mere reference in the grounds of detention. Whereas non-supply of a copy of the document relied upon in the grounds of detention has been held to be fatal to continued detention, the detenu need not show that any prejudice is caused to her. This is because non-supply of such a document would amount to denial of the right of being communicated the grounds and of being afforded the opportunity of making an effective representation against the said order. The Supreme Court further observed that it would not be so where the document merely finds a reference in the order of detention or among the grounds thereof. In our opinion, none of the documents to which Mr. Tripathi has made reference could be called as relevant documents or the document which are the basis of the order of detention. Some of them are not even referred to in the grounds of detention. In our opinion, therefore, even if the

present order is examined in the light of **Powanammal's case (supra)**, it cannot be held to be vitiated on account of non-supply of translations of any documents.

30. So far as the detenu's claim that illegible documents have been supplied to him and that because they are illegible documents at least a translation of those documents ought to have been supplied to the detenu is concerned, in his reply, the detaining authority has stated that the information contained in these pages were telephone numbers from where the calls are made, duration of calls and the dates on which the calls were made. Though, these documents were illegible, still that will not affect the detenu's right of making an effective representation. It is further stated that the same argument holds good for the Hindi translation of the above documents. We find this explanation correct and in tune with the law laid down by the Supreme Court. We are of the opinion that these documents are merely subsidiary facts or documents in the nature of evidentiary facts. They are not the basis or pith and substance of the detention order and, therefore, assuming that to some extent, they are illegible or that the translation thereof, was not supplied to the detenu, the detention order cannot be vitiated on that ground.

31. In this connection, Mr. Tripathi relied upon a judgment of the Supreme Court in **Manjit Singh Grewal alias Gogi v. Union of India & Ors., 1990 (Supp.) SCC**

59, where certain copies of the documents which were supplied to the detenu were not legible and the Supreme Court had set aside the order of detention. In our opinion, this judgment cannot be applicable to the facts of the present case because, it is quite clear that the Supreme Court has expressly confined its judgment to the peculiar facts of that case. It is not discussed in the judgment as to what was the nature of the documents which were illegible. In fact, the Supreme Court observed that "It is not necessary in the facts of this case to go into the question whether these documents were relevant or material". Since in the present case, we are of the opinion that these documents do not form part of pith and substance or the basis of the detention order, this argument of Mr. Tripathi must be rejected.

32. Mr. Tripathi then urged that the grounds of detention are vague. It is contended by him that there is no material to justify that the detenu was employed by Thakkar and that there is no material to indicate that a sum of Rs.18,61,80,000/- paid to Thakker by pay order in favour of Surendran is included in the amount paid by the detenu to Thakkar. In reply to this, the detaining authority has stated that the detenu had in his statement admitted that he had made three payments totalling Rs.18,61,80,000/- and transferred Rs.12.44 crores through his bank account to other bank accounts, as per the instructions of Bhupendra Thakkar and, hence, there was nothing wrong in referring to the detenu as an employee

of Thakkar. It is further stated in the reply that the details of Rs.18,61,80,000/- have been clearly mentioned in paragraph 29 of the grounds of detention as "three payments of Rs.5 lakhs, Rs.4.68 crores and Rs.13,88,80,000/- totalling to Rs.18,61,80,000/-." In this, Rs.5 lakhs is the amount paid in cash to Munna, Rs.4.68 crores is total amount transferred from the account no.4380 of M/s. Sweety International Pvt. Ltd. with Indian Overseas Bank, Kalbadevi Branch in form of pay orders (Available at page nos.897 - 899 of the relied upon documents) and Rs.13,88,80,000/- is the amount paid in cash out of duty drawback received through State Bank of India, Navasheva Branch (the fact which the detenu had admitted in his statement dated 26/2/2003 - page no.774 of the relied upon documents.) There is no mention about this in paragraph 41 of the grounds of detention. However, the amount of Rs.18.618 crores finds a place in paragraph 42 of the grounds of detention which is the total of the aforesaid three payments, which includes payments in the form of cash, pay orders and Laxman's share of duty drawbacks. The entire amount of Rs.18,61,80,000/- is not in the form of pay orders alone. The details of the amount transacted in the detenu's account have been furnished to the detenu in the form of bank certificate. In view of this, we find the attack, on the order of detention that it suffers from the vice of vagueness to be baseless.

33. Mr. Tripathi also urged that there is inconsistency

between paragraphs 29 and 42 of the grounds of detention. In this connection, it will be useful to refer to the reply given by the detaining authority. The alleged discrepancies have been explained as under:

> "The grounds of detention have to be read as a whole. Such reading will make it clear that Shri Altaf referred to in para 29 and Shri Asarulla Rakha Khan of Dubai referred to in para 42 of the grounds of detention is one and the same person; and that the payment of Rs.5 lakhs made to Shri Munna was by order of Shri Asarulla Rakha Khan on behalf of Shri Laxman, both residing in Dubai. Thus, there is no contradictory statement in the grounds of detention made by the detaining authority. Therefore, no confusion is caused. The nexus between S/Shri Asarulla Rakha Khan and Laxman of Dubai have been well brought out in the grounds of detention."

Having perused the explanation offered by the detaining authority, we are of the opinion that there is no inconsistency between paragraphs 29 and 42 of the grounds of detention.

34. Even otherwise, as rightly pointed out by Mr. Agarwal, assuming certain documents are illegible or not

supplied or their translation is wrong or there is any other infirmity, the detention order cannot be set aside on that ground. We have already noted that all documents which are the basic facts of the case are supplied. In view of section 5(A) of the COFEPOSA Act, each activity of the detenu becomes a ground of detention and if in respect of some of the grounds of detention, there is any non-supply of documents or any other infirmity, the order of detention can be sustained on the basis of the other grounds of detention. **Prakash Chandra Mehra's case (supra)** can be usefully referred to in this connection.

35. Mr. Tripathi then urged that the detenu has no antecedents. He contended that the preventive detention should be the last resort. In this case, the action taken by the detaining authority is not preventive but punitive in nature. We are unable to agree with the learned counsel.

36. In **Haradhan Shah v. The State of West Bengal and others, AIR 1974 SC 2154** the Supreme Court has drawn a distinction between preventive detention and punitive detention. The relevant observations of the Supreme Court may be quoted.

> "32. The power of preventive detention is qualitatively different from punitive detention. The power of preventive detention is a precautionary power

> exercised in reasonable anticipation. It may or may not relate to an offence. It is not a parallel proceeding. It does not overlap with prosecution even if it relies on certain facts for which prosecution may be launched or may have been launched. An order of preventive detention may be made before or during prosecution. An order of preventive detention may be made with or without prosecution and in anticipation or after discharge or even acquittal. The pendency of prosecution is no bar to an order of preventive detention. An order of preventive detention is also not a bar to prosecution."

Therefore, merely because the detenu was not arrested in connection with any offence in the past, it cannot be said that he cannot be preventively detained. As has been done in this case, a preventive detention order is issued on the basis of the prejudicial activities of the detenu on the reasonable apprehension that unless preventively detained, he will indulge in similar prejudicial activities in future. In this case, we are unable to hold that the detention order is punitive.

37. Lastly, Mr. Tripathi urged that there is a delay in issuing the order of detention. We find no substance in this submission also. We have quoted inextenso the

nature of prejudicial activities and its magnitude. It would have eroded the national economy if it was not detected and checked. It is significant to note that in this case several persons are involved and in fact, about 14 detention orders had to be issued. Out of these 14 detention orders, 3 orders have been confirmed by the Madras High Court. We are informed that 7 persons are still absconding. Our attention has been drawn by Mr. Agarwal to the judgment of the Madras High Court which deals with the co-detenu's case. The Madras High Court has considered the submission that the detention order is bad on account of delay in its issuance. The Madras High Court has rejected the contention by setting out the stages of investigation, how the proposal was processed, how it was placed before the Screening Committee and how the order of detention order came to be passed. We are in respectful agreement with the Madras High Court on this aspect. There is no dispute that the factual data is the same in both the matters. In the present case, the aspect of delay has been dealt with by the detaining authority in his affidavit. The detaining authority has stated that this is a case, involving a number of persons and the extent of illegal transfer of funds was to the tune of Rs.600 crores. Though the investigations started in the year 2000, the investigations continued till 7/8/2003, the date on which statement of K.P. Abdul Majeed was obtained. K.P. Abdul Majeed was the main player in the network. He was able to accomplish the task with the help of his son Asarullah Rakka Khan, in

Dubai, Surendrakumar and their associates. The detaining authority has annexed a detailed chronology of events to the affidavit and sought to rely on them. We have carefully perused this chronology of events and we are of the opinion that there is no slackness or inaction or inertia on the part of the sponsoring authority. It must be noted that in a case of this type, investigation as regards the detenu's involvement cannot be done in isolation. If the order was issued in a haphazard manner in the midst of investigation and without adequate material, it would have become vulnerable. The detaining authority must collect necessary materials to establish the link between the detenu and other associates and to locate the place the detenu occupies in the racket and, for that, in our opinion, the time taken to prepare the proposal to place it before the Screening Committee and get it approved by the Screening Committee and to further process it till the issuance of the order can never be termed as delay.

38. In this connection, we may usefully refer to the Supreme Court observations in **Rajendrakumar Natvarlal Shah v. State of Gujarat and others, AIR 1988 SC 1255**. In this case, the Supreme Court was considering delay in issuing the order of detention in matters pertaining to detention under the statutes like COFEPOSA Act. The Supreme Court issued certain guide-lines for various High Courts. The relevant observations of the Supreme Court may be quoted.

"9. In the enforcement of a law relating to preventive detention like the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 there is apt to be some delay, between the prejudicial activities complained of under section 3(1) of the Act and the making of an order of detention. When a person is detected in the act of smuggling or foreign exchange racketeering, the Directorate of Enforcement has to make a thorough investigation into all the facts with a view to determine the identity of the person engaged in these operations which have a deleterious effect on the national economy. Quite often these activities are carried on by persons forming a syndicate or having a wide network and therefore this includes recording of statements of persons involved, examination of their books of accounts and other related documents. Effective administration and realisation of the purposes of the Act is often rendered difficult by reason of the clandestine manner in which the persons engaged in such operations carry on their activities and the consequent difficulties in securing

sufficient evidence to comply with the rigid standards, insisted upon by the Courts. Sometimes such investigation has to be carried on for months together due to the magnitude of the operations. Apart from taking various other measures i.e. launching of prosecution of the persons involved for contravention of the various provisions of the Acts in question and initiation of the adjudication proceedings, the Directorate has also to consider whether there was necessity in the public interest to direct the detention of such person or persons under section 3(1) of the Act with a view to preventing them from acting in any manner prejudicial to the conservation and augmentation of foreign exchange or with a view to preventing them from engaging in smuggling of goods etc. The proposal has to be cleared at the highest quarter and is then placed before a Screening Committee. For ought we know, the Screening Committee may meet once or twice a month. If the Screening Committee approves of the proposal, it would place the same before the detaining authority. Being conscious that the requirements of Art. 22(5) would not be satisfied unless the ‘basic facts and materials’ which

weighed with him in reaching his subjective satisfaction, are communicated to the detenu and the likelihood that the Court would examine the grounds specified in the order of detention to see whether they were relevant to the circumstances under which the impugned order was passed, the detaining authority would necessarily insist upon sufficiency of the grounds which would justify the taking of the drastic measure of preventively detaining the person.

10. Viewed from this perspective, we wish to emphasise and make it clear for the guidance of the different High Courts that a distinction must be drawn between the delay in making of an order of detention like the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 and the delay in complying with the procedural safeguards of Art. 22(5) of the Constitution. It has been laid down by this court in a series of decisions that the rule as to unexplained delay in taking action is not inflexible. Quite obviously, in cases of mere delay in making of an order of detention under a law like the Conservation of Foreign Exchange &

> Prevention of Smuggling Activities Act, 1974 enacted for the purpose of dealing effectively with persons engaged in smuggling and foreign exchange racketeering who, owing to their large resources and influence have been posing a serious threat to the economy and thereby to the security of the nation, the Courts should not merely on account of delay in making of an order of detention assume that such delay, if not satisfactorily explained, must necessarily give rise to an inference that there was no sufficient material for the subjective satisfaction of the detaining authority or that such subjective satisfaction was not genuinely reached. Taking of such a view would not be warranted unless the Court finds that the grounds are 'stale' or illusory or that there is no real nexus between the grounds and the impugned order of detention."

39. In view of the above observations of the Supreme Court, the petitioner can hardly be heard to say that the present order of detention needs to be set aside on account of delay in its issuance.

40. In the view that we have taken, the petition is dismissed.

41. All parties to act on ordinary copy of this order, duly authenticated by the Personal Assistant/Sheristedar of this court.

(SMT. RANJANA DESAI, J.)

(A.S. OKA, J.)